Jones County / P.P.M.E. Local 2003

2001-02
CEO 348
SECTOR 2

In the Matter of the Arbitration between

Jones County, Iowa	)	
	)	Interest Arbitration
Employer,	)	
	)	
and	)	PERB Case No. CEO 348/Sector 12
	)	
Public, Professional & Maintenance Employees, Local 2003, I.B.P.A.T., Union.	)	**Decision and Award**

Appearances

For the Union
Joe Rasmussen, Business Representative
PPME Local 2003
P.O. Box 69
Alburnett, IA 52202

For the Employer
Renee Von Bokern, Esq.
Von Bokern Associates
2771 104th St., Suite H
Des Moines, IA. 50322

On May 14, 2002, commencing at 1:00 p.m., a hearing was held before Sara D. Jay, Arbitrator, who was selected by the parties under the provisions of the Iowa Code Chapter 20, as amended, to decide collective bargaining issues at impasse between the parties. The parties have established an alternative date for completion of impasse procedures of June 1, 2002. The hearing was held by telephone and was electronically recorded. At the hearing, each party was given the opportunity to present evidence and argument, and to examine and cross-examine witnesses, and was also given the opportunity to submit testimony in written form, if they so chose. Closing arguments were made orally on May 14, 2002, on which date the record is deemed closed.

Issues at Impasse

In negotiating the terms of their next labor agreement, the parties have been unable to agree as to four issues, on which final offers have been submitted and for which fact-finder recommendations have been made. The issues to be resolved by arbitration, the parties' final positions, and the recommendations of Fact-Finder Wilford H. Stone, are set forth below:

1. Holidays. The Union proposes a premium for sheriff deputies who work on a holiday, at the rate of one and one-half times the regular rate for hours actually worked, in addition to current contract provisions. The Employer proposes no change from the current contract, which provides that all deputies receive a compensatory day off with pay whether or not they work on the holiday. The fact-finder recommended no change from the current contract.
2. Leaves of Absence. The Union proposes the addition of a new provision permitting the use of two days of sick leave per year to care for ill family members, with "immediate family" to be defined by the five-day and three-day bereavement categories. The Employer proposes no change from the current contract, which allows use of sick leave for the employee only. The fact-finder recommended no change from the current contract.
3. Insurance. The Union proposes changing the employee premium contribution to a set dollar amount of $25 per month for single coverage and $100 per month for family coverage. The Employer proposes increasing the employee's share of the family premium from 12% to 18%. The fact-finder recommended increasing the employee's share of the family premium from 12% to 15%.
4. Wages. The Union proposes increases of 2% on July 1, 2002, and on January 1, 2003, with an increase of the top percentage for sheriff deputies from 80% to 82% of the sheriff's wage. The Union also proposes changing the last sentence to read: "Advancement within the salary range shall be on the basis of length of service as provided in Schedule A." The Employer proposes a 3% increase effective July 1, 2002, except for deputy sheriffs, who would receive no increase, and no language change. The fact-finder recommended increases of 2% on July

1, 2002 and on January 1, 2003, except that deputy sheriffs would remain at their current percentage of the Sheriff's salary and thus receive no increase, and no language change.

Prior to commencement of hearing, the parties reached agreement on an overtime/call-back issue and a job classification issue. Both parties have changed their positions in several respects following fact-finding, in an effort to reach agreement.

In arriving at a decision on the issues and making an award, the arbitrator has fully considered the arguments and submissions of the parties, which may be stated in an abbreviated form herein. The arbitrator has also considered the statutory duties and limitations of the Employer, and has considered the provisions of Iowa Code §20.22(9), which requires the arbitrator to consider:

> in addition to any other relevant factors, the following factors:
> a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
> b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other public employees doing comparable work, giving consideration to factors peculiar to the area and the classifications involved.
> c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.
> d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

Background

Jones County is located in eastern Iowa, and is one of the less populous counties surrounding the Waterloo-Cedar Rapids-Iowa City area. It has had a collective bargaining unit since shortly after the public employee collective bargaining law was passed in the mid-1970s, when it was formed as a wall-to-wall unit. The unit covers all non-supervisory employees under the control of the County Board of supervisors, in a mixed unit of secondary road employees, sheriff department employees and deputies, and assorted clerical and custodial positions. Care facility workers have also been a part of the unit until recent privatization led to an agreement that those workers should be excluded.

Jones County has a population of 20,221. The counties within the comparison group,

neighboring non-urban counties similar in size, are: Benton (population 25,308), Buchanan (21,093), Jackson (20,296), Delaware (18,404), Cedar (18,187) and Iowa (15,671). At hearing, the parties did not disagree on this grouping of comparable counties, which has apparently been adopted in several fact-findings and arbitrations, including the 2002 fact-finding which preceded the arbitration herein. However, the Employer notes that there are significant difference between the counties which are comparable on the basis of geography and size. In particular, the Employer finds differing economic trends, industries and per capita income among the comparable counties to be significant.

Jones County is 92nd in the state in per capita income; comparable counties range from 6th (Iowa county) to 88th (Delaware), with a majority of comparable counties being between 70th and 88th in per capita income. A large prison is located in Jones County, at Anamosa. The Union notes that, if the prison population is included as "residents" of the County, its per capita income would be skewed by that inclusion. The Employer suggests that wages and benefits should take into account local economic conditions such as the lower income in Jones County, while the Union suggests that Jones County is healthier than comparable counties in retail sales, in its reserve carryover, and in its property valuation. The Employer responds that the County has not attracted new businesses, and that its reserve carryover measured at any point in time is not necessarily indicative of a budget surplus, as reserves may be dedicated to particular purposes but not yet spent. The Employer provides news articles in support of its contention that the recession and accompanying budget problems have not ended. The Employer does not dispute its ability to pay the increases proposed by the Union. However, the Employer does request that the employees share in the economic burdens of the current budget problems.

Issue 1: Holiday Pay

Union Position:

The Union has proposed a change in the holiday pay, for deputy sheriffs only. The Union would change the first sentence of the second paragraph of Article 7 to include new language, shown

in bold:

> In lieu of holidays, Deputy Sheriffs personnel shall be granted an additional day of vacation for each holiday that they work, **plus one and one-half (1 1/2) times their regular rate of pay for all hours worked on a designated holiday.** If the holiday falls on their regular day off, they shall receive an additional day off with pay.

According to the Union, this proposal would provide equity internally, and comparability externally. The Union notes that other bargaining unit employees are paid one and one-half times their regular rate of pay for any hours worked on a holiday and, in addition, are paid their regular rate of pay for the holiday. Under the current contract, the deputies receive a day off with pay for working on the holiday, which provides them with effective double time for working on a holiday. If a deputy does not work on the holiday, the deputy still receives an additional paid day off. Thus, the Union reasons, deputies who work on the holiday lose the ability to celebrate the holiday with family without receiving any additional compensation for working on the holiday.

Externally, the Union notes that, of the four counties in which deputies are bargaining unit members, all provide the equivalent of 2-1/2 times the normal compensation for working on a holiday.

The Union notes that its proposal affects only seven employees, the deputies themselves. Although the language of the provision might appear otherwise, the jailers and dispatchers already receive extra pay at one and one-half times their regular rate for working on the holiday. The number of employees affected may have been misunderstood at the fact-finding level.

In response to contentions that the language was fairly bargained and should not be disturbed, the Union objects that assumptions should not be made about the bargaining history of the provision. The Union states that no bargaining history was introduced into evidence, and the language has been in the parties' agreement since at least 1985-1986.[1] According to the Union, one party's desire to link

---

[1] The 1985-1986 contract contained the disputed language, but did not contain the current provision that "All employees, except Sheriff Deputies, required to work on a designated holiday shall be paid the holiday at their regular day's pay, plus one and one-half (1 1/2) times their regular rate of pay for all hours worked." Thus, it appears that the Sheriff's department may initially have received a greater holiday benefit. No evidence of the rationale for the change was introduced.

two issues does not invoke a necessary assumption that one matter is an appropriate *quid pro quo* for the other. Here, specifically, the Union objects that it is disproportionate to link base wages for the deputies to coincidental pay which will be received by a few deputies who are working on holidays during the year. Accordingly, the Union urges that its proposal be adopted.

Employer Position:

The Employer opposes any change in the language relating to holiday pay. According to the Employer, the party seeking a change in a benefit has the burden of proof, and the Union has fallen short on that burden. Further, the Employer objects to the lack of a *quid pro quo.* The Employer states that an improvement in deputies' holiday pay was paired with severing the link between the deputies' pay and the Sheriff's salary. The deputies' pay is a percentage of the Sheriff's pay. This year, when the Sheriff had no pay increases, the Employer states that interest increased in this paired proposition. The Employer was willing to improve holiday pay conditioned on the Union's acceptance of changing the method for determining deputy pay increases. Because the Union did not accept that proposal, and because a change in deputy pay as a percentage is no longer on the table, the Employer asserts that it would be inappropriate to change the holiday pay benefit. As the Employer notes, the fact-finder adopted this reasoning, and proposed no change in the holiday pay benefit.

Discussion

The holiday benefit for the employees in this bargaining unit is the same for all personnel, with the sole exception of the deputies. The Sheriff's department is necessarily open and staffed during holidays; no explanation was given in terms of bargaining history for treating the deputies differently from the jailers and dispatchers. It was logical for the fact-finder to assume, based on the fact that the language treating deputies differently was adopted into the agreement, that the parties agreed upon the basis for that differential treatment. Generally, language adopted by the parties should not be disturbed without a significant reason.

One of the accepted reasons for changing language is where there is a strong trend to provide a specific benefit, particularly where there is a special class of employees involved. Here, the Union has shown evidence of unanimity in comparable counties in providing double time-and-a-half for holidays worked for law enforcement personnel. That benefit is not uncommon in Iowa and throughout the Midwest. Because law enforcement personnel are often required to work on holidays while other employees are not, extra holiday compensation is frequently provided, in the form of additional days off or additional pay or both. At this point in time, there appears to be no logical reason to provide the deputies with a lesser holiday benefit than any other employee in the unit, whether inside or outside the Sheriff's department, and with a lesser benefit than any deputy in an organized unit in a comparable county.

It is suggested that the holiday benefit should not be improved for the deputies alone without also changing the wage linkage which is unique to the deputies. This view has some merit. However, the linkage between the deputies' pay and the sheriff's pay is not created by the parties' agreement itself. Rather, state law creates that link, which could not be altered even if the parties chose to express the deputies' wage in dollar terms. See Iowa Code §331.904. Thus, the withdrawal of proposed changes to the deputy wage scale alone is not a sufficient reason to ignore the inequity presented by singling out the deputies for lower holiday pay, knowing that, unlike most other unit employees, at least some deputies will inevitably be working on every holiday. There is no basis in comparables for singling out deputies for a lower benefit, and the public good is well-served by having deputies who are not, in essence, punished for attending to their law enforcement duties on holidays, times when the need for their assistance is often most urgent.

Award

The Agreement for 2002-2003, Article 7, shall be amended to provide

In lieu of holidays, Deputy Sheriffs personnel shall be granted an additional day of vacation for each holiday that they work, plus one and one-half (1 1/2) times their regular rate of pay for all hours worked on a designated holiday. If the holiday falls on their regular day off, they shall receive an additional day off with pay.

Issue 2: Leave of Absence

Union Position:

The Union seeks additional language in the Agreement to provide for additional use of sick leave as follows:

> 4. Two (2) days per fiscal year for care of immediate family members. Such use shall not require a doctor's certificate. "Immediate family" shall be defined by the five day and three day bereavement leave categories.

In support of its position, the Union notes that most families now have two working parents, and that significant problems and disruption are caused by minor childhood illnesses. Children with such minor illnesses may not attend school or day care, and parents need to be able to care for their children. The Union does not propose an increase in sick leave accumulation, but states that it proposes only an additional use for currently-earned sick leave. Thus, the Union suggests, there is no real cost to the Employer, as the unused sick leave time would have been converted to vacation if it could not be used to care for ailing family members.

In response to the contentions of the Employer, the Union asserts that the federal Family Medical Leave Act covers only serious illnesses, not such normal childhood problems as the flu, strep, and other illnesses which cause children to be excluded from school or day care. The Union contends that the Special Leave provisions under the Agreement cannot practically be applied to the situation of, *e.g.,* a child with an earache, as one-week advance approval of special leave is required. The Union suggests that all employees of the County, including those outside the unit, see the need for providing this benefit: 80 employees including non-members of the bargaining unit petitioned the Employer to permit use of sick leave to care for family members who are ill. The Union suggests that, if there were no problem with use of sick leave to care for children who are ill, the non-bargaining unit employees would not have felt compelled to make this request. The Union further objects to linking family sick leave to a reduction in benefits for employees who are currently classed as full-time, but would have become part-time under the Employer's proposal at fact-finding.

In further support of its position, the Union presents news articles detailing the non-union employee petition and the Employer's response. The Union states that it has gone to arbitration on this issue in the past, and been unable to successfully bargain a change with the Employer. Thus, the Union suggests, it is not likely to gain this benefit outside arbitration.

Employer Position:

The Employer proposes no change in the current language on leaves of absence. Without evidence of a problem, the Employer suggests, there is no reason to change these provisions. According to the Employer, there has been no problem. No employee has been refused time off to care for a sick child, or other relative. In fact, the Employer asserts, permission for absence for these reasons is routinely granted at the department head level. Special Leaves have not been requested, because there have been no denials of simple time off.

Even so, the Employer states, it was willing to consider granting two days of sick leave to care for immediate family members had the Union agreed to re-define a full-time employee as one who works 35 or more hours per week, increased from the current level of 30 hours per week. This link is logical, the Employer asserts, to balance the increased sick leave benefit cost. The Employer suggests that the Union unreasonably rejected this proposal and should not be reward for "intractability," as well as suggesting that even a reasonable proposal should have a *quid pro quo*.

The Employer further notes that the expansion proposed by the Union is not supported by external comparison. Four comparable counties permit use of sick leave to care for a spouse or child, two also permit use of sick leave to care for a parent. However, at least four counties do not permit use of sick leave for illness of an employee's family members, and none permits leave for the extended family described in the Union's proposal.

The Employer agrees that there may have been a misunderstanding at the fact-finding level in that the Union is not seeking to add to the sick leave accumulation. However, the Employer states that there will be a cost to this additional use of sick leave, at least in additional absences.

The Employer suggests that the Family Medical Leave Act does apply, by defining a "serious

illness" as one which is treated by a health care provider. Thus, the Employer suggests, there is no need to add the disputed language to the Agreement. The Employer stresses that employees have been, and continue to be, free to use compensatory time off or vacation time in order to have paid time to care for sick relatives.

Decision

As conceded, the Union's proposal is not unreasonable, and certainly has a basis in the current needs of most working families. The Union does not seek to increase the accumulation of sick leave, but only to provide for an additional use of sick leave. Further, as the Union states, it has requested a modest two days for this additional sick leave usage, having requested five days at the fact-finding level and been rejected. The Union's proposal has little new cost to the Employer because the sick leave days will already be accrued. The Union's proposal simply transfers unused sick days from vacation accrual (at one-third) to usable sick leave at full pay.

The Union may be correct on the limitations of the federal Family and Medical Leave Act. *See,* 29 U.S.C. §2611(11). However, both parties endorse the concept of permitting leave time to care for a sick child, and agree that it is an appropriate use of sick leave. In fact, certain states already require employers to permit usage of employees' sick leave to care for an ailing child. *See, e.g.,* Minn. Stat. Minn. Stat. §181.9413(a).

Nonetheless, the Union's proposal is not clearly supported by the provisions in comparable counties. Use of sick leave to care for family members has increased, but only half the counties permit its usage. More important, family leave in other counties is limited to child, spouse, and parent, at its broadest. The Union's proposal here would allow use of sick leave for all of the following individuals, in addition to spouse, child or parent: siblings, parents-in-law, step-parents, step-parents-in-law, grandparents, grandchildren, and any relative who was a member of the employee's household at the time leave is requested. These definitions are contained in the three- and five-day bereavement leave definitions, and are far broader than those of any comparable county.

Perhaps more important, although the Union has shown that employees are concerned about

acquiring this benefit, there is no evidence that employees have not been permitted adequate time and flexibility to care for ailing relatives. It is an economic matter whether employees use vacation time or accumulated sick leave to care for relatives, particularly when the expanse of relatives reaches beyond spouses, parents and children. Without evidence of any problem in obtaining adequate leave time, or a continuing inability to draft a mutually-acceptable provision, the arbitrator will not intervene in the parties' attempts to negotiate a reasonable family leave provision for themselves.

Award

Article 8, Leaves of Absence, shall remain unchanged for the 2002-2003 Agreement.

Issue 3: Health Insurance

Union Position:

The Union proposes changing the employee health insurance contribution from a percentage to a flat dollar contribution, in the amount of $25 for single coverage and $100 per month for family coverage. This proposal contrasts with the Employer's proposal to increase the employee portion of the family premium from 12% to 18%, and the fact-finder's recommendation to increase the employee portion of the family premium to 15%. The Union has discontinued its fact-finding proposal relating to short-term disability benefits.

According to the Union, the health insurance history of the Employer has been troubled. During a previous period of self-insurance, 1987-1988, the Union asserts that the Employer drastically increased the costs by under-funding the self-insurance fund. The Employer then changed its policy unilaterally, and was found guilty of a prohibited practice.

Insurance has continued to be an issue in ensuing contracts, in problems described in detail by the Union in its submissions. Following a change in the ISAC plan offerings, the parties agreed to increase co-insurance and out-of-pocket maximums, but left deductibles unchanged. In the 2000-

2002 agreement, the parties agreed in fact-finding/mediation to increase deductibles and out-of-pocket maximums. As of July 2001, the Employer again became self-insured. A prohibited practice complaint was resolved by the parties in January 2002. The Union states that the PPC agreement permits employees to grieve any instance in which the employee believes benefits have not been paid at the level which would have been provided under ISAC Plan 4.

The Union notes that the Employer has now abandoned its fact-finding proposal to change the level of benefits, but continues to propose an increase in the family contribution. The Union urges that it is unfair to require only those employees selecting family coverage to bear a greater share of premium expense. The Union particularly protests the unpredictability of a percentage contribution when the Employer is self-funded and has changed the insurance "year." Employees were notified on May 3, 2002, that the health insurance costs had increased and a corresponding increase in the contribution (as a paycheck deduction) would take place in two weeks. The Union protests that the change in plan year has prevented employees from negotiating the effects of premium increases in conjunction with the July 1, effective date of the Agreement, and has foreclosed planning for sudden reductions in pay. A flat dollar contribution would remedy that problem, the Union states, as well as providing an incentive for the Employer to manage its self-funded plan in a fiscally-responsible manner. Since the Employer is setting the amount of the premium, the Union states, it is only reasonable to encourage the Employer to keep the cost low.

In support of its contentions, the Union provides evidence to show the premium amounts as of the time of hearing, the amounts effective June 1, 2002, and the ISAC Plan 4 premium for 2003. Additionally, the Union calculates the premiums and contributions under the Employer proposal and fact-finder recommendation, and its own proposal. The Union notes that it proposes having employees contribute $45,000 of the costs, which is more than the fact-finder recommendation of $43,601.08, and nearly as much as the Employer proposal of $50,095.20. The Union asserts that the Employer has already realized significant cost savings by reducing the number of policy holders (through privatizing the care facility), and by self-funding. Based on the Union's willingness to pay a higher contribution amount in the new Agreement, the Union urges that the flat dollar amounts be

adopted.

The Union suggests that, if any change is to be made, the change it proposes is preferable. If the historical position of the parties is to be maintained, that historical position has included an employer contribution of 88% to the family insurance premium. Any change in that amount, including the amount recommended by the fact-finder, the Union would find to be a significant change. The Union contends that health insurance is not negotiated alone, but has been traded for wages, and should be considered in that light.

Employer Position

The Employer proposes increasing the amount of the employee contribution to the family health insurance premium to 18%. The Employer has modified its position since fact-finding to omit previously-proposed changes to the plan provisions.

The Employer denies that it has realized any savings in insurance costs. As the fact-finder stated, and as is evident from various news articles, the cost of insurance has been rising. This pattern has existed for a significant time, and in most jurisdictions, has resulted in employees bearing an increased share of the costs. The Employer asserts that the change suggested by the fact-finder of an additional 3% is insufficient to repair the balance between the amount paid by the Employer and the contribution by the employee. According to the Employer, health insurance is unique in that it benefits the employee exclusively. Thus, the Employer reasons, there is no need to provide a *quid pro quo* when asking the employees to participate at a higher level in paying for the benefit.

In support of its position, the Employer provides insurance data on comparable counties, with the deductibles, the prescription drug plans, and the premium amounts paid by employees. According to that data, the employees in this jurisdiction pay a lower amount for their premiums, and have reasonably comparable deductibles and prescription drug benefits. In fact, the Employer contends, the benefits offered in this jurisdiction are superior to many other plans, while the cost to employees is relatively low.

The Employer states that it does not have greater control over the premium amount under a

self-funded plan. The premium is set by a third-party administrator, and the amount must be sufficient to avoid under-funding, which the Union points to as a past issue.

The Employer concedes that the dollar amount of the Union's offer is not unreasonable; however, the Employer objects that the Union's exhibit fails to reflect the significant contribution paid by the Employer. While the employee contribution will increase on June 1, 2002, the Employer contribution will increase by an even larger amount. The Employer further objects to altering the method on which the employee portion is based, from a percentage to a flat dollar amount, characterizing it as a significant change in concept. In effect, the proposed change would cap the amount of the employee contribution, the Employer states, and insurance increases will quickly overtake the amount offered by the Union.

Decision

The fact-finder noted that a significant majority of the employees in this unit take family coverage, which costs employees 5% of the single plan, plus (currently) 12% of the difference between the single and family coverage. Until June 1, 2002, the employee share is $66.67 per month; as of that date, the family premium will increase to $918.17, with an employee share of $83.00, prior to any changes made in the new Agreement.

In recognition of the difficulty of this issue, both parties have made efforts to modify their positions following fact-finding. The Union has increased its proposed payments toward premiums; both parties have abandoned proposals to change the scope of coverage. Under the Employer's current proposal, employees would pay 18% plus 5%, or $114.79 per month; the Union proposes a flat rate of $100 per month. The fact-finder recommended a smaller increase in the family premium contribution, increasing the amount to 15% plus 5%, which would yield an employee contribution of $98.90 per month based on the current premium, with an Employer contribution of $819.27 per employee per month.

It is understandable that the Union would be apprehensive about increasing costs of health insurance, and would attempt to cap those costs. In essence, providing a flat dollar amount does act

as both a cap, and a strong incentive to the Employer to keep premium costs low. However, under any of the proposals, the Employer will continue to pay a far greater share of any premium than the employees, which in itself is an incentive to keep the premiums as low as reasonably possible. With the parties' agreement to maintain the level of benefits, it is not reasonable to expect the Employer to be able to reduce the premiums while also avoiding dangerous under-funding of its plan. Furthermore, no basis has been shown either in the bargaining history of the parties or in terms of comparable counties for conversion of percentage insurance contributions to flat dollar amounts. The arbitrator is reluctant to disturb such a major provision without a stronger showing of specific need, even if the reserves noted by the Union had been shown to be unencumbered and available to pay for employee health insurance.

This arbitrator agrees with the fact-finder that it is very difficult to compare insurance plans across counties, because the provisions of plans are so different. However, as the fact-finder noted, employees in most comparable counties are paying a higher percentage of family premiums than the employees in this jurisdiction. While the Union's objections to increasing the cost of family coverage without increasing the cost for singles are not unreasonable, it is also a normal pattern for employees to pay nothing, or far less, toward the single coverage premium than for family coverage. That pattern is reflected in comparable counties. As the fact-finder stated, an increase of 3% in the family contribution maintains relative rank of employees in this jurisdiction while providing the Employer with the requested sharing in costs.

The amount recommended by the fact-finder is a "modest" increase, as requested by the Employer. It represents an increase of .5% in terms of wages over the current .5% cost, or 5.5 cents per hour more than the current distribution with the new premium. The fact-finder's recommendation continues the form of the contribution and slightly increases the employee's share without over-burdening the employees or making any wage increase meaningless.

Award

Article 10, Insurance, shall be changed to decrease the Employer's share of the family

monthly premium from 88% to 85% of the difference between the single and family monthly premium, plus 95% of the single employee premium.

Issue 4: Wages

Union Position:

The Union proposes wage increases of 2% effective July 1, 2002, and 2% effective January 1, 2003, except for the deputy sheriffs. For that classification, the Union proposes that the percentage of the sheriff's salary received by the deputies be increased from 80% to 82%. The Union also proposes changing the last sentence of Hourly Wage Rates from the current language, which provides: "Advancement within the salary range may be made for completion of probation, anniversary date, and meritorious service." Instead, the Union proposes new language stating: "Advancement within the salary range shall be on the basis of length of service as provided in Schedule A."

The Union notes that the 2%-2% wage increase was recommended by the fact-finder. At the fact-finding level, the Employer had proposed a wage freeze, which was rejected. The Union states that the effect of not recommending an increase in the percentage rate for deputies is to provide them with a wage freeze, due to the fact that the Sheriff (and other elected officials) took a wage freeze this year, which the Union denominates an "election-year freeze." The Union asserts that, if the wage increases of elected officials over the last four years are compared to those of the bargaining unit, the elected officials have more than compensated for the freeze in non-election years. Data provided by the Union shows that the elected officials received 4% increases in fiscal 1999, mostly 4% in fiscal 2000, with increases ranging from 4.4 to 9% in 2001, and from 3% to 8% in 2002. The bargaining unit, in contrast, received increases of 3.2-3.7% for 1999, 3.25-3.8% for 2000, 3.75% for 2001, and 3.5% for 2002.

The Union notes that, in 2000, the parties agreed to reduce the percentage of the sheriff's deputies' pay from 82% to 80%. Because the Sheriff has proposed a freeze for the current fiscal year, the Union suggests it is appropriate to return to the pre-2000 percentage of 82%, which would

provide a majority of the deputies with a 2% increase, or 36 cents per hour. That amount, the Union states, will cover slightly more than the insurance increases, and will prevent the deputies from falling behind comparability groups. In support of its contentions, the Union provides data showing recent public sector settlements in the state.

As to the proposed change in language, the Union notes that the Employer has long opposed such a change on the grounds that there have been no employees denied anniversary increases based on the permissive nature of the language. Now, the Union states, an employee has been denied a step increase and was discharged after she protested the denial. Because it can no longer be said that step increases have been unaffected by the permissive language of the Agreement, the Union suggests that the language should be changed.

Employer Position

The Employer proposes an increase of 3% effective July 1, 2002. The Employer also opposes changing the percentage wage for the deputies or the permissive language relating to step advancement.

According to the Employer, the wages of this unit are competitive with comparable communities. Providing as an example the secondary road patrol operators, the Employer notes that the dollar amount of its compensation is among the highest, and that its proposed percentage increase is comparable to other communities which range from 2.75% to 5%. The Employer notes that the two counties which have a higher wage for patrol operators also require employees to pay more for their health insurance. Washington County employees contribute $216 per month, and Cedar County employees contribute $101.70 per month. The Employer further notes that its deputy sheriff salary is the second highest among comparable counties. The Employer views its proposed increase of 3% as appropriately calculated to maintain the county's relative position.

As to the change in step increase language, the Employer states that the language has been in the collective bargaining agreement for many years. Although no one has been able to trace its origin, it is necessarily true that the parties agreed to the language or it would not be in the

Agreement, and it is therefore presumed to be the result of a trade-off. For the language to be changed, the Employer urges that a *quid pro quo* is needed. The Employer states that it would be inconsistent to give a wage increase to an under-performing employee, which would be the effect of changing the language as requested by the Union. The Employer states that, in the last ten years, only two wage increases have been withheld. Thus, the Employer reasons, there is no ongoing problem with the language and it should be retained.

As to the deputies, the Employer notes that their salaries have always been linked to the Sheriff's salary. The amount of the deputies' pay is reasonably comparable to similar communities, and there is no need for a change in percentage to create a "catch-up" increase.

Discussion

The parties' general wage proposals are not far different, the Employer having modified its position following fact-finding. Even with that modification, the Union's proposal better fits the comparative data with regard to general wage increases. However, the difference between 2%-2% and a 3% immediate increase is not so great as to persuade the arbitrator that either party's position must prevail.

The Union continues to propose a change in the permissive language affecting step increases. If the Union were correct that the use of the permissive "may" immunized the Employer from any question regarding its granting of increases, the language would certainly need to be changed. However, as the Employer stated during hearing and as is generally understood in collective bargaining relationships, discretionary powers of an employer may not be exercised arbitrarily, capriciously or discriminatorily. That inherent limitation provides protection to the employees, through arbitration and/or use of the prohibited practice procedures. Further, at this point, it has not been shown, or seriously suggested, that management abused its discretion in applying this language. Rather, it has been shown only that management did apply the language to an employee it believes to have had a serious performance problem. Without a showing of ongoing problems, the arbitrator agrees with the fact-finder that the evidence does not justify a change of voluntarily-adopted

language.

The parties also disagree on the percentage of the sheriff's wage to be provided for the deputies. The fact-finder did not recommend changing the percentage as proposed by the Union, and rejected the Employer's proposal to convert the percentage to a stated salary, a proposal the Employer has omitted at this stage.

Changing the percentage for the deputies to 82% would avoid a freeze in a year when health insurance costs will rise. Hoewver, in terms of comparable communities, it is accurate to say that the deputies' wages compare reasonably. Further, the Union has demonstrated that the elected officials have had a pattern of being compensated for low election year increases in non-election years. The Sheriff's increases for 1999-2002 have been: 4%, 4%, 7% and 4%. The deputies have received increases of greater amounts in the years in which the Sheriff received a greater increase. It seems likely that this pattern will continue, and that the 80% paid to the deputies will provide them with a similar advantage in the next non-election year, despite providing a disadvantage this year. While the reversion to 82% is not, in itself, unreasonable, it is not so clearly preferable as to outweight the reasons to maintain the language negotiated by the parties. Overall, the fact-finder's recommendation is most reasonable, based on comparability and all other factors.

Award

Article 15, and Schedule A: Hourly wage rates shall be increased by 2% effective July 1, 2002, and by 2% effective January 2, 2003. These increases shall not apply to the hourly rates for deputy sheriffs determined as a percentage of the sheriff's salary. No further changes shall be made in this Article.

Dated: May 30, 2002

Sara D. Jay, Arbitrator

CERTIFICATE OF SERVICE

I certify that on the 30th day of May, 2002, I served the foregoing Award of arbitrator upon each of the parties to this matter by facsimile and by mailing a copy to them at their respective addresses as shown below:

Joe Rasmussen, Business Representative
PPME Local 2003
P.O. Box 69
Alburnett, IA 52202

Renee Von Bokern, Esq.
Von Bokern Associates
2771 104th St., Suite H
Des Moines, IA. 50322

I further certify that on the 30th day of May, 2002, I will submit this Award for filing by mailing it to the Iowa Public Employment Relations Board, 514 East Locust, Suite 202, Des Moines, Iowa 50309.

Sara D. Jay, Arbitrator